

### Abatement in the Court of Appeals.

1904, art. 5, sec. 75. 1888, art. 5, sec. 73. 1860, art. 2, sec. 9. 1815, ch. 149.  
1888, ch. 42.

**75.** No case in which an appeal has been prayed or writ of error applied for, whether the record shall have been transmitted to the court of appeals or not, shall abate by the death of either of the parties to such appeal or writ of error if the heir, executor or other proper party to be made a party shall make the necessary suggestion, and appear to such appeal or writ of error for the purpose of prosecuting or defending the same; and if the heir, executor or other proper party to be made a party shall fail to make such suggestion and appear to such appeal or writ of error within twenty days after the beginning of the term to which the appeal or writ of error is taken, it shall be competent for the other party to such appeal or writ of error to make such suggestion, and thereupon process shall immediately issue to the party named in said suggestion to appear by a day to be therein named, and be made a party to such appeal or writ of error.

This section applies to cases in which an appeal has been entered during the lifetime of the parties, and not to a case where one of the parties dies before the appeal is prayed. *Goldschmid v. Mellne*, 86 Md. 372; *Harryman v. Harryman*, 49 Md. 69. See also, *Thomas v. Thomas*, 57 Md. 509.

Where, in an action for malicious prosecution, after appeal prayed the defendant dies, the suit will abate. *Clark v. Carroll*, 59 Md. 181; *Turner v. Walker*, 3 G. & J. 377.

This section applies in a negligence suit for injury to the person, where the plaintiff dies after appeal prayed. *Slacik v. Northern Central Ry. Co.*, 92 Md. 214.

This section is to be construed in connection with sections 76 and 77. Where the heir, etc., is a defendant, he can not elect to suffer the case to abate. Object and effect of this section. *Carroll v. Bowie*, 7 Gill, 38.

At common law, a judgment can not be obtained if either party is dead, but if such judgment is entered notwithstanding the death of one of the parties, it is conclusive. *Trail v. Snouffer*, 6 Md. 314.

This section held to have no application. *Booze v. Humbird*, 27 Md. 5; *Owings v. Owings*, 3 G. & J. 1.

Cited but not construed in *Hopper v. Jones*, 64 Md. 581; *Young v. Citizens' Bank*, 31 Md. 70.

See sections 59 and 87.

As to abatement and revivor at law, see art. 75, sec. 25, *et seq.* As to abatement and revivor in equity, see art. 16, sec. 1, *et seq.*

See art. 93, sec. 104.

*Ibid.* sec. 76. 1888, art. 5, sec. 74. 1860, art. 2, sec. 10. 1815, ch. 149.

**76.** When the plaintiff in an appeal or writ of error dies before the term to which such an appeal or writ of error is returnable, the heir, executor or other proper person to be made a party, may appear in the court of appeals and suggest the death of the plaintiff, and appear to such appeal or writ of error for the purpose of prosecuting the same.

This section applies to cases where the plaintiff, who has already taken an appeal, dies before the term to which the appeal was returnable, and not to a case where the plaintiff dies before the appeal was prayed. *Goldschmid v. Mellne*, 86 Md. 372; *Harryman v. Harryman*, 49 Md. 69.

This section held to have no application. *Harryman v. Harryman*, 49 Md. 67; *Owings v. Owings*, 3 G. & J. 1.

See notes to sections 75 and 77.